

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

N.B., A MINOR, BY HER PARENTS,)	
NATURAL GUARDIANS, AND NEXT)	CASE NO. 1:20-CV-699
FRIENDS DWAN BRAY AND AARON)	
BRAY,)	DISTRICT JUDGE TIMOTHY S. BLACK
)	
Plaintiffs,)	Magistrate Judge Karen L. Litkovitz
)	
vs.)	
)	
BON SECOURS MERCY HEALTH, INC., et)	
al.,)	
)	
Defendants.)	
)	

JOINT MOTION TO EXTEND
JURISDICTIONAL DISCOVERY PERIOD

COME NOW Plaintiffs, N.B., a Minor, by her Parents, Natural Guardians, and Next Friends Dwan Bray and Aaron Bray, and Defendant the United States of America, by and through their respective undersigned counsel, and hereby submit this Joint Motion to Extend Jurisdictional Discovery Period respectfully stating as follows:

1. This is an obstetrical malpractice action wherein Plaintiffs have alleged, *inter alia*, that healthcare providers involved in the care and treatment of Dwan Bray deviated from the applicable standards of care and that this alleged negligence caused the minor Plaintiff to suffer catastrophic brain damage.

2. On June 8, 2021, the Court issued an Order granting Plaintiffs' Motion for Leave to Conduct Jurisdictional Discovery (Doc. 20) relative to whether Timothy Thress, M.D. ("Dr. Thress") and HealthSource of Ohio were acting within the course and scope of their employment as Public Health Service employees and in furtherance of a federal grant pursuant to the Federally

Support Health Care Assistance Act (“FSHCAA”). 42 U.S.C. § 233.

3. Following the Court’s Order, on June 25, 2021, Plaintiffs served requests for production of documents directed to Defendants the United States of America and Mercy Health – Anderson Hospital, LLC relative to Dr. Thress’ care and treatment of Ms. Bray.

4. On July 26, 2021, the United States served its Response to Plaintiff’s First Request for Production of Documents including approximately 700 pages of information related to Dr. Thress and HealthSource of Ohio. On August 26, 2021, Defendant Mercy Health – Anderson Hospital, LLC produced its Response to Plaintiff’s First Request for Production of Documents including, among other things, tax documents issued to Dr. Thress and HealthSource of Ohio.

5. After receiving and reviewing the jurisdictional discovery produced, on August 31, 2021, Plaintiffs issued interrogatories to the United States in addition to providing a list detailing with reasonable particularity matters for examination in order to schedule a deposition pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure. Answers to Plaintiffs’ Interrogatories were served by the United States on October 1, 2021.

6. Despite diligent and good faith efforts on the part of both Plaintiffs and Defendant regarding the scheduling of depositions for Fed. R. Civ. P. 30(b)(6) representatives, the parties have been unable to complete these depositions within the 120-day jurisdictional discovery period provided by the Court’s June 8, 2021 Order due to trial/scheduling conflicts of other parties’ counsel in this matter.

7. At this time, the depositions of two 30(b)(6) representatives for HealthSource of Ohio have been scheduled for November 19, 2021 and November 23, 2021.

WHEREFORE, Plaintiffs, N.B., a Minor, by her Parents, Natural Guardians, and Next Friends Dwan Bray and Aaron Bray, and Defendant the United States of America jointly and respectfully move this Court for an Order extending jurisdictional discovery in this matter through and including December 8, 2021 prior to issuing any ruling or scheduling a hearing on Plaintiffs' Motion to Remand (Doc. 20) and Defendant United States of America's Motion to Dismiss for Failure to Exhaust Administrative Remedies (Doc. 21).

Respectfully submitted,



Myles J. Poster (PHV001)
Wais, Vogelstein, Forman & Offutt, LLC
1829 Reisterstown Road, Suite 425
Baltimore, MD 21208
(410) 998-3600
myles@malpracticeteam.com

Daniel N. Moore, Esq. (#0076430)
Donald C. Moore, Esq. (#0003945)
Kelly W. Thye, Esq. (#0073630)
The Moore Law Firm
1060 Nimitzview Drive, Suite 200
Cincinnati, OH 45230
danmoore@moorelaw.com

Paul W. Flowers, Esq. (#0046625)
Louise E. Grube, Esq. (#0091337)
Paul W. Flowers, Co., L.P.A.
Terminal Tower, 40th Floor
50 Public Square
Cleveland, OH 44113
(216) 344-9393
pwf@pwfco.com
leg@pwfco.com
***Attorneys for Plaintiffs, N.B. a Minor, by
Her Parents, Natural Guardians, and
Next Friends Dwan Bray and Aaron Bray***

VIPAL J. PATEL
United States Attorney

/s/ Margaret A. Castro (w/permission)
MARGARET A. CASTRO (#0078968)
Assistant United States Attorney
Attorney for Federal Defendant
221 East Fourth Street, Suite 400
Cincinnati, Ohio 45202
T: (513) 684-3711
F: (513) 684-6972
Margaret.Castro@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served by electronic mail on this 21st day of October, 2021, to the following:

David C. Calderhead, Esq. (0039013)
Joel L. Peschke, Esq. (0072526)
Calderhead, Lockemeyer & Peschke
6281 Tri-Ridge Boulevard, Suite 210
Loveland, OH 45140
dcalderhead@clp-law.com
jpeschke@clp-law.com
***Attorneys for Defendants,
Brown County Women's Health, Inc.,
Brown County Women's Health, LLC, and
Barbara Patridge, M.D.***

Thomas M. Evans, Esq. (0033430)
Brian D. Goldwasser, Esq. (0061926)
Rendigs, Fry, Kiely & Dennis, LLP
600 Vine Street, Suite 2650
Cincinnati, OH 45202
tevans@rendigs.com
bgoldwasser@rendigs.com
***Attorneys for Defendants,
Bon Secours Mercy Health, Inc.,
Mercy Health - Anderson Hospital, LLC;
and Lisa Toft, R.N.***

Joseph M. Mccandlish, Esq. (0073775)
Assistant Attorney General
Collections Enforcement
150 E. Gay Street, 21st Floor
Columbus, OH 43215
joseph.mccandlish@ohioattomeygeneral.gov
***Attorney for the State of Ohio Department of
Medicaid***

Matthew J. Horwitz, Esq. (0082381)
Margaret A. Castro, Esq. (0078968)
U.S. Department of Justice
U.S. Attorney's Office, Southern District of
Ohio 221 E. 4th Street, Suite 400
Cincinnati, OH 45202
matthew.horwitz@usdoj.gov
Margaret.castro@usdoj.gov
***Attorneys for Defendant United States of
America***

/s/ Myles J. Poster

Myles J. Poster